...REME COURT, U.S.

...preme Court of the United States

OCTOBER TERM, 1955

No. 10

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

STEVE NELSON,
Respondent.

...TION OF ATTORNEY GENERAL OF THE STATE OF NEW YORK FOR REHEARING OF DECISION OF APRIL 2, 1956

JACOB K. JAVITS
Attorney General of the State
of New York
State Capitol
Albany, New York

JAMES O. MOORE, JR.
Solicitor General of New York

RUTH KESSLER TOCH
Assistant Attorney General
of New York

conspiracy to advocate and teach its overthrow by force and
be that indoctrination in the techniques of terror to destroy
ld be indictable under either statute. But the teaching which
of a different character.

sent record is concerned, what petitioners did was to organize
emselves teach the Marxist-Leninist doctrine contained chiefly
lations of Leninism by Stalin (1924), The Communist Mani-
gels (1848), State and Revolution by Lenin (1917), History
rty of the Soviet Union (B) (1939).

to Soviet Communism what Mein Kampf was to Nazism. If
he ugliness of Communism is revealed, its deceit and cunning
re of its activities becomes apparent, and the chances of its
t is not, of course, the reason why petitioners chose these books
They are fervent Communists to whom these volumes are gos-
e creed with the hope that some day it would be acted upon.
he Court does not outlaw these texts nor condemn them to the
s do literature offensive to their creed. But if the books them-
d, if they can lawfully remain on library shelves, by what rea-
in a classroom become a crime? It would not be a crime under
hese books to a class, though that would be teaching what the
hrow of the government is. The Act, as construed, requires
—that those who teach the creed believe in it. The crime then
is taught but on who the teacher is. That is to make freedom
what is said, but on the *intent* with which it is said. Once we
we enter territory dangerous to the liberties of every citizen.

BLACK: Here again, as in BREARD v. ALEXANDRIA,
basic disagreement with the Court is not as to how we should
what was said in prior decisions but springs from a funda-
onstitutional approach. Consequently, it would serve no useful
osition at length.

ant to emphasize what the crime involved in this case is, and
petitioners were not charged with an attempt to overthrow the
ere not charged with non-verbal acts of any kind designed to
ment. They were not even charged with saying anything or
gned to overthrow the Government. The charge was that they
d to talk and publish certain ideas at a later date. The indict-
spired to organize the Communist Party and to use speech or
publications in the future to teach and advocate the forcible
ernment. No matter how it is worded, this is a virulent form
speech and press, which I believe the First Amendment for-
r. 3 of the Smith Act authorizing this prior restraint uncon-
and as applied.

, contrary to all constitutional ideas of fair criminal procedure,
ig[illegible] not indicted for the crime of actual advocacy, may be

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EALTH OF PENNSYLVANIA,

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RNEY GENERAL OF THE STATE RK FOR REHEARING OF ON OF APRIL 2, 1956

URT:

ttorney General of the State of New rs rehearing of the Court's decision 3 in *Pennsylvania* v. *Nelson*, joining of Allegheny County, Pennsylvania, eneral whose names appeared on a g of the decision, filed heretofore,

petition is that further consideration ed upon the following points:

y submitted that there is a wealth nial to the effect that Congress did the field. The author of the bill by opularly referred to, Congressman Virginia, went to the lengths of writ

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p. 149
p. 3).

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l of Pennsylvania that he had
e law, nor was it intimated in
arings or floor debates, that the
tate legislation (quoted in dis-
ealth v. *Nelson*, 104 A. (2d) at
Justice Reed's dissenting op.

t the Smith Act "occupied the
rallel state legislation is meant
prosecute the advocacy within
e that organized government,
verthrown by force or violence,
acuum in the means for execut-
e Smith Act and the common
nd parallel state penal statutes,
prosecution of persons who so

op. p. 11) that the Court's
ed to any case where the prose-
y directed against an attempt
vernment." We may not, how-
nique of advocacy of govern-
t take the form of making the
vernment in one stroke, but a
of states. Are the states in
ized by the existence of the
ion? And does the mere fact
books, but if no action is taken
n a particular instance, compel
litious advocacy is being com-
This is a vast country and the
ation cannot be everywhere at

This petitioner reads th
to inhibit a state in pros
state as such. It is resp
statement by the Court
doubts which have been
the decision in relation

It is not the interest
unit of government that
spectfully suggest. It i
union and its people in
which we live from over
government is made up
as well as a federal uni
42 states have asked their
laws against advocacy of
They have thus said that
interest of the federal go

The people of New
anarchy statute in *Peopl*
by this Court *sub nom. G*
There was a parallel fed
federal government took
Nelson opinion quotes the
(n. p. 3) to point out tha
session was not in issue
understood that were it
not have prosecuted Git
statute notwithstanding
not?

C

The magnitude of the
forces for protection aga

ecision as not intended
or sedition against the
ubmitted that an exact
nt could serve to quell
the precise import of
nal sedition laws.

deral government as a
nt in this field, we re-
rest of the nation, the
the government under
ch is dominant. That
nd state governments,
nment. The people of
rnments to enact penal
of those governments.
ct is not the dominant

invoked its criminal
, 234 N. Y. 132, aff'd
w York, 268 U. S. 652.
te at the time, but the
n. The Court in the
Court of Pennsylvania
stion of federal super-
flow case. Is it to be
New York State could
its criminal anarchy
deral government had

this decision upon the
nal subversion and the

the states through to the nation, merits rehearing of this case, we respectfully urge, so that further consideration may be given to implications as stated herein, which may not have originally appeared in full focus.

Respectfully submitted,

JACOB K. JAVITS
Attorney General of the State
of New York

JAMES O. MOORE, JR.
Solicitor General of New York

RUTH KESSLER TOCH
Assistant Attorney General
of New York

Certificate of Counsel

We hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

May 8, 1956.

JACOB K. JAVITS
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